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7 **STATE OF WASHINGTON**
8 **YAKIMA COUNTY SUPERIOR COURT**

9 IN THE MATTER OF THE
10 DETERMINATION OF THE RIGHTS
11 TO THE USE OF THE SURFACE
12 WATERS OF THE YAKIMA RIVER
13 DRAINAGE BASIN, IN
14 ACCORDANCE WITH THE
15 PROVISIONS OF CHAPTER 90.03,
16 REVISED CODE OF WASHINGTON,

17 STATE OF WASHINGTON,
18 DEPARTMENT OF ECOLOGY,

19 Plaintiff,

20 v.

21 JAMES J. ACQUAVELLA, et al.,

22 Defendants.

NO. 77-2-01484-5

[PROPOSED] ORDER REQUIRING
METERING, MEASURING AND
REPORTING REQUIREMENTS, ALL
SUBBASINS (1-34) IN BENTON,
KITITITAS, AND YAKIMA
COUNTIES

23 THIS MATTER having come before the Court on the Petition for Order Pendente Lite
24 Re: Metering, Measuring, and Reporting Requirements, All Subbasins (1-34) in Benton,
25 Kittitas, and Yakima Counties, the Court having heard from all interested parties and being
26 fully advised; now, therefore,

IT IS ORDERED, consistent with RCW 90.03.360, all water right owners with water
rights confirmed in a Conditional Final Order (CFO) as of the date of this order shall install an
approved metering or measuring device at each confirmed diversion point by April 1, 2006.

1 The approved metering or measuring device(s) shall comply with the requirements contained
2 in WAC 173-173-090 through 175.

3 IT IS FURTHER ORDERED, consistent with RCW 90.03.360, all water right owners
4 with water rights confirmed in a CFO subsequent to this order shall install an approved
5 metering or measuring device at each confirmed diversion point. For CFOs entered on or
6 before August 31 of any given year, the measuring device shall be installed by April 1 of the
7 following calendar year. For CFOs entered on or after September 1 of any given year, the
8 measuring device shall be installed by April 1 of the second following calendar year. The
9 approved metering or measuring device(s) shall comply with the requirements contained in
10 WAC 173-173-090 through 175.

11 IT IS FURTHER ORDERED that said water right owners shall generate and maintain
12 diversion records for each water right. For water rights with a diversion rate greater than 1.0
13 cfs, said water right owners shall provide the diversion records to the Department of Ecology
14 (Ecology) on the form it prescribes in accordance with WAC 173-173-050 through 080. For
15 those with diversions less than 1.0 cfs must maintain records, but need not be provided to
16 Ecology unless requested. Where two or more individual water right holders share a common
17 diversion point and the combined diversion is one (1) cfs or greater, the water right holders
18 shall provide the diversion records to Ecology. All records sent to Ecology shall be provided in
19 accordance with WAC 173-173-050 through 080.

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that in the event that
21 any person/entity covered by this order who fails to install an approved metering or measuring
22 device at each such diversion point by the schedule set forth in this and continues to use the
23 diversion point thereafter must notify Ecology in writing. The notification shall state the
24 reasons that an approved metering or measuring device was not or could not be installed within
25 the time allowed by this Order and clearly identify the claim number and the relevant point of
26 diversion under the claim. Ecology may make a case-by-case determination based upon the

1 notification and modify the schedule for compliance, subject to WAC 173-173-175. If Ecology
2 grants a variance, it shall issue an order specifying the conditions of the variance.

3 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any person/entity
4 who fails to install and maintain a metering or measuring device in accordance with the
5 requirements and schedule in this Order or a variance granted by Ecology shall be considered
6 to be in violation of this Court Order.

7 The applicability of the requirements and procedures for measuring and reporting water
8 use by persons/entities with diversions of 1.0 cfs or more from the Yakima, Naches, and Tieton
9 Rivers pursuant to ORDER PENDENTE LITE REGARDING METERING,
10 MEASUREMENT, AND REPORTING dated October 13, 1994 are not affected by this Order.
11 Persons/entities that divert less than 1.0 cfs from the Yakima, Naches, and Tieton rivers are
12 affected by this Order and are subject to the requirements to install and maintain a metering or
13 measuring device in accordance with the schedule set forth herein.

14 The applicability of the requirements and procedures for measuring and reporting water
15 use by persons/entities within the Teanaway River and Big Creek subbasins pursuant to
16 ORDER PENDENTE LITE REGARDING METERING, MEASURING, AND REPORTING
17 REQUIREMENTS, dated August 27, 1998 are superseded by this Order. All other
18 requirements of that ORDER remain in effect.

19 Any aggrieved party or Ecology may request injunctive or other appropriate relief from
20 this Court against any person/entity who fails to comply with the provisions of this Court
21 Order Re: Metering, Measuring, and Reporting Requirements.

22 This Order does not apply to those authorized points of diversion within portions of
23 subbasins 23, 25, 27 and 29, located within the exterior boundaries of the Yakama Reservation.

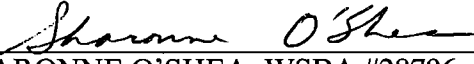
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Entered this ____ day of August, 2005.

WALTER A. STAUFFACHER, JUDGE

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